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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

ABDULLAH THAMIR AL SHUAIB,

Plaintiff,

vs.

SHEARER'S FOODS, INC.,
SNACK ALLIANCE, INC.,

Defendants

Case No. 2:12-CV-2270

COMPLAINT

Jury Trial Requested

JURISDICTION

1.

Plaintiff is a citizen of Iraq who is lawfully admitted for permanent residence in the United States and domiciled in the State of Arizona. Defendant Shearer's Foods, Inc. is an Ohio corporation whose principal place of business is located in Brewster, Ohio. Defendant Snack Alliance is an Oregon corporation whose principal place of business is located in Brewster, Ohio. The amount in controversy is in excess of \$75,000.00, exclusive of costs and fees. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

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VENUE

2.

The events giving rise to Plaintiff's claims occurred in Oregon. Pursuant to 28 U.S.C. § 1391, venue is proper in the United States District Court for the District of Oregon.

COMMON ALLEGATIONS

3.

Defendants operate a food processing plant in Hermiston, Oregon, which employs 25 or more employees. Plaintiff was employed by Defendants starting on or about September 21, 2011. Plaintiff started as a laborer, and was promoted to a mechanic. Plaintiff earned \$14.00 per hour, and worked 40 hours per week on average.

4.

On or about March 7, 2012, Plaintiff sustained an on-the-job injury when his finger got caught in a belt drive. Plaintiff filed a workers' compensation claim which was accepted.

5.

On or about March 16, 2012, Plaintiff was released to return to work on light duty. Plaintiff advised Defendants that he was not able to return to work and that he was seeking another medical opinion. On or about March 30, 2012, Plaintiff was given a new release from any work. On or about March 30, 2012, Defendants terminated Plaintiff for job abandonment. On or about April 6, 2012, Defendants advised Plaintiff that it would not rescind the termination despite the new release from any work.

6.

On or about May 17, 2012, Plaintiff filed a complaint with the Bureau of Labor and Industries alleging discrimination based on workers' compensation and family medical leave. On or about August 22, 2012, the Bureau of Labor and Industries issued a Notice of Substantial Evidence Determination finding that Defendants engaged in unlawful employment practices, to wit: (a) by discharging Plaintiff based on his use of the workers' compensation system, and (b)

1 by failing to automatically commence family medical leave when Plaintiff did not return to light
2 duty. On or about September 25, 2012, the Bureau of Labor and Industries issued a right-to-sue
3 letter.

4 **COUNT ONE**

5 **ORS 659A.040**

6 7.

7 Plaintiff re-alleges Paragraphs 1-6 & 13-14.

8 8.

9 Plaintiff's use of the workers' compensation system was a substantial factor in
10 Defendants' decision to terminate him. Defendants' actions as alleged herein above constitute an
11 unlawful employment practice in violations of ORS 659A.040.

12 **COUNT TWO**

13 **ORS 659A.043-046**

14 9.

15 Plaintiff re-alleges Paragraphs 1-6 & 13-14.

16 10.

17 Plaintiff was covered by the Oregon Family Medical Leave Act, and was eligible to take
18 family medical leave at the time of his discharge. Defendants failed to automatically commence
19 family medical leave as required by ORS 659A.043-046 when Plaintiff did not return to light
20 duty, but instead, Defendants terminated Plaintiff's employment. Defendants' actions as alleged
21 herein above constitute an unlawful employment practice in violation of ORS 659A.043-046.

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COUNT THREE

ORS 659A.083

11.

Plaintiff re-alleges Paragraphs 1-6 & 13-14.

12.

Plaintiff was covered by the Oregon Family Medical Leave Act, and was eligible to take family medical leave at the time of his discharge. Defendants failed to automatically commence family medical leave as required by ORS 659A.043-046 when Plaintiff did not return to light duty, but instead, Defendants terminated Plaintiff's employment. Defendants' actions as alleged herein above constitute an unlawful employment practice in violation of ORS 659A.183.

DAMAGES

13.

As a result of his termination, Plaintiff has sustained economic damages in the form of past and future lost wages and benefits, and non-economic damages in the form of emotional distress damages, which he entitled to recover pursuant to ORS 659A.885.

ATTORNEY FEES

14.

Plaintiff is entitled to recover reasonable costs and attorney fees pursuant to ORS 659A.885 and ORS 20.107.

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1 WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

- 2 1. For economic damages not to exceed \$56,000.00;
- 3 2. For non-economic damages not to exceed \$250,000.00;
- 4 3. For statutory minimum damages in the amount of \$200.00;
- 5 4. For injunctive relief in the form of reinstatement; and
- 6 5. For pre/post judgment interest, costs and attorney fees.

7 DATED: December 17, 2012

8 /s/ M. J. Ross

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Michael J. Ross, OSB No. 91410
Of Attorneys for Plaintiff